

Order

Michigan Supreme Court Lansing, Michigan

Entered: April 17, 2002

2001-10

Proposed Amendment of Rule 6.005
and Proposed New Rule 8.123 of
the Michigan Court Rules

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering the addition of new Rule 8.123 and an amendment of Rule 6.005 of the Michigan Court Rules. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposals or to suggest alternatives. Before adoption or rejection, the proposals will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted at www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[The present language of MCR 6.005 would be
amended as indicated below.]

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment
 for Indigents; Waiver; Joint Representation; Grand
 Jury Proceedings

(A)-(H) [Unchanged.]

~~(I) Plan for Appointment. In each county, the court with trial jurisdiction over felony cases must adopt and publish a plan to govern the process of selecting and appointing lawyers to represent indigent defendants and file it with the supreme court clerk and the state court administrator under MCR 8.112(B)(3).~~

(~~I~~) [Subrule (J) Unchanged, except for letter re-designation.]

Staff Comment: A related proposal published today would move the substance of subrule (I) to a new rule to be designated MCR 8.123(B).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

[A new MCR 8.123 would be added. The proposed new rule is set forth below.]

Rule 8.123 Records of Counsel Appointments

- (A) Applicability. This rule applies to all trial courts, which means all circuit courts, district courts, probate courts, and municipal courts.
- (B) Plan for Appointment. Each trial court must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel who represent indigent parties in that court. The procedures should de-emphasize the judge's role in those decisions.
- (C) Approval by Chief Justice. The trial court must submit the local administrative order to the State Court Administrator, who shall review it and make a recommendation to the Chief Justice. The local administrative order may not take effect unless the Chief Justice approves it.
- (D) Required Records. At the end of each calendar year, trial courts must compile written or electronic records of:
 - (1) the number of appointments given to each attorney by that court;
 - (2) the number of appointments given to each attorney by each judge of that court;
 - (3) the total public funds paid to each attorney for appointments by that court; and
 - (4) the total public funds paid to each attorney for appointments by each judge of that court.

Trial courts that contract for services to be provided by an affiliated group of attorneys may apply, pursuant to subrule (G), for a partial exemption that will allow them to record only the group's appointments and compensation.

The records required by this subrule must be retained for the period specified by the State Court Administrative Office's General Schedule 16.

- (E) Public Access to Records. The original records must be available at the trial court for inspection by the public, without charge. The court may adopt reasonable access rules,

and may charge a reasonable fee for providing copies of the records.

- (F) Reports to State Court Administrator. When requested by the State Court Administrator, the trial court must file a copy of its annual report with the State Court Administrator.
- (G) Exemptions. The Chief Justice may exempt a trial court from any requirement of this rule that would impose an unreasonable burden on that court. A court seeking such an exemption must submit its request in writing to the State Court Administrator. The request must detail the circumstances that justify the exemption.

Staff Comment: On June 26, 2001, the Michigan Supreme Court published for comment a proposed administrative order governing the appointment and compensation of all persons appointed to provide services for trial-court litigants or trial courts. In light of the comments submitted in writing and at the public hearing held on December 13, 2001, the proposal has been revised in both form and substance. The revised proposal is for a new court rule that would be designated MCR 8.123. It is limited to counsel appointments, and relies on "sunshine" disclosure requirements instead of mandating the criteria for appointing and compensating counsel.

If the proposed new rule is adopted during 2002, its record-keeping requirements would first apply to calendar year 2003.

Subrule (B), which is similar to current MCR 6.005(I), requires all trial courts to adopt and file local administrative orders governing their own counsel appointment and compensation processes. Current MCR 6.005(I), which applies only to circuit courts, would be rescinded.

Subrule (B) also limits judges' involvement in the decisions about whom to appoint and how much to pay the appointees. Each court may devise its own specific procedures.

Subrule (C) requires that a trial court's plan be submitted to the State Court Administrator and approved by the Chief Justice.

Subrule (D) requires trial courts to maintain detailed records of which courts and judges appointed which attorneys, and how much compensation the attorneys received. The rule specifies calendar-year reporting because much of the required data will be obtained from calendar-year tax forms.

Subrule (E) requires that the records be available locally for convenient inspection by the public.

Subrule (F) allows the State Court Administrator to request and receive copies of a court's records.

Subrule (G) creates an exemption procedure that a court may utilize

if it can show that maintaining the records required by subrule (D) would be unduly burdensome.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by *August 1, 2002*. Clerk's Office, Michigan Supreme Court, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When filing a comment, please refer to file **2001-10**. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.